

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.11350 of 2007

Date: 07.06.2007

Between:

Mulla Mahaboob Saheb and others.

....Petitioners

and

The A.P. State Wakf Board and others.

....Respondents

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ORDER:

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There are two Mosques in Podili Village of Prakasam District. They used to be managed by a set of Muthawallies, whose names were notified in the Gazette. Subsequently, vacancies arose, but the regular Muthawallies were not appointed. To ensure the administration of the said Wakf, the A.P. Wakf Board, the first respondent herein, appointed a committee, through its order, dated 05.05.2005, for a period of two years. The said appointment was challenged in this Court by filing W.P.No.11637 of 2005. An interim order was granted and even when the writ petition was pending, the term of the committee expired.

The first respondent appointed a supervisory committee comprising of 11 persons, namely respondents 2 to 12 for the Wakf through his proceedings, dated 26.05.2007. The petitioners claim to be the descendants of the recognised Muthawallies and they challenge the order, dated 26.05.2007.

Heard Sri Syed Shareef Ahmed, the learned counsel for the petitioners, Sri Mohd. Vasi Ahmed, the learned standing counsel for the first respondent and Sri A.M.Qureshi, the learned counsel for respondents 2 to 12.

The first contention urged on behalf of the petitioners is that the Chief Executive Officer (C.E.O.) cannot discharge the

functions of the Special Officer and the same is contrary to the letter and spirit of Section 99 of the Wakf Act (for short 'the Act'). Reliance is placed upon a judgment of this Court, dated 18.07.2000, in Writ Appeal No.1103 of 2002 and batch. The Division Bench of this Court was dealing with a case where the Government empowered the C.E.O. to discharge the functions of the Board, after the term of the Board expired. The instructions issued by the Government empowering the C.E.O. were sought to be sustained by relying upon Section 99 of the Act. It was observed that Section 99 gets attracted only when the Board is superseded and not otherwise.

In the instant case, admittedly, the Board was superseded and arrangements came to be made under Section 99 of the Act. Therefore, it cannot be said that the C.E.O. has no authority to issue the impugned order.

The petitioners contend that the first respondent is dodging the matter in constituting the committee by the recognised Muthawallies and their legal heirs and *ad hoc* measures are being made. The nomenclature of the committee constituted through the impugned order itself discloses that it is only a supervisory committee. The first respondent is under obligation to appoint Muthawalli from out of the successors of recognised Muthawallies, or in accordance with the scheme, if any. Once such a course is resorted to, the necessity to appoint committees, even for limited term, ceases to exist. Though several contentions have been urged as to the legality and propriety of the committee comprising of respondents 2 to 12, this Court is not inclined to accept the same. However, the Board cannot abdicate its obligation to constitute a committee.

For the foregoing reasons, the writ petition is disposed of, directing that the first respondent shall endeavour to appoint Muthawalli or Muthawallies, as the case may be, to the wakf in question, duly recognising the claims of the heirs of the erstwhile Muthawallies, in accordance with law, as early as possible. In case any disputes arise as to the recognition of Muthawallies, it shall be open to the affected parties to approach the A.P. Wakf Tribunal. There shall be no order as to costs.

07.06.2007

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